

November 19, 2013

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
CG Docket No. 02-278**

Dear Ms. Dortch:

On Friday, November 15, 2013, Michele Farquhar and I, as counsel to the Cargo Airline Association (“CAA”), along with CAA President Stephen Alterman and CAA member representative Bill Brown, met by conference call with Mark Stone and Aaron Garza from the Consumer & Governmental Affairs Bureau to discuss CAA’s pending Petition for Expedited Declaratory Ruling (“Petition”) regarding CAA members’ ability to send non-telemarketing package delivery notifications under the Telephone Consumer Protection Act (“TCPA”).¹

During the meeting, the CAA representatives encouraged the Commission to grant the Petition in advance of the upcoming holiday season. They explained that granting the Petition and enabling non-telemarketing package delivery notifications to wireless telephone numbers would maximize convenience for consumers, facilitate the timely delivery of packages (including gifts and other packages from third parties), and reduce the serious problem of package theft. They also explained that the Commission has authority to declare that package delivery notifications are exempt from the TCPA’s restriction on autodialed and prerecorded calls and messages to wireless telephone numbers.² Specifically, as discussed in the Petition,³ the TCPA authorizes the Commission to exempt, from the restriction on autodialed and prerecorded calls and messages, such calls and messages to wireless telephone numbers “that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the

¹ *Petition for Expedited Declaratory Ruling*, Cargo Airline Association, CG Docket No. 02-278 (filed Aug. 17, 2012) (“Petition”).

² Package delivery notifications are already exempt from the TCPA’s restriction on prerecorded voice message calls to residential telephone numbers. See 47 C.F.R. § 64.1200(a)(2)(iii) (providing an exemption for calls made for a commercial purpose but that do not include or introduce an unsolicited advertisement or constitute a telephone solicitation); see also 47 C.F.R. § 64.1200(a)(2)(iv) (providing an exemption for calls to persons with whom the caller has an established business relationship at the time the call is made).

³ Petition at 6-9.

privacy rights the provision is intended to protect.”⁴ The TCPA also expressly authorizes the Commission to exempt such calls “by rule or order.”⁵

The CAA representatives expressed support for an exemption for non-telemarketing voice call and text message package delivery notifications that “are not charged to the called party.” The representatives reported that there are several options available today to send free-to-end-user (“FTEU”) text messages to wireless telephone numbers. For example, third-party solutions providers offer companies, for a fee, the ability to send FTEU text messages to subscribers of all four national U.S. wireless carriers. According to data from one CAA member, subscribers of these four carriers represent approximately 88% of the wireless telephone numbers that are provided today as contact information for residential package deliveries. Solutions for other carriers may also be available, and any exemption should provide flexibility for CAA members to work with carriers and third parties to develop additional FTEU voice and text solutions.⁶

Consistent with its prior filings in this proceeding, CAA supports the Commission including the following conditions as part of an exemption for voice call and text message package delivery notifications:

1. A notification may only be sent to the telephone number for the package recipient.
2. Notifications must identify the name of the delivery company and include contact information for the delivery company.
3. Notifications may not include any telemarketing, solicitation, or advertising content.
4. Voice call and text message notifications must be concise, generally one minute or less in length for voice calls and one message of 160 characters or less in length for text messages.
5. Delivery companies shall seek to minimize the number of notifications sent for each package; generally, only one notification (whether by voice call or text message) should be sent per package.
6. Delivery companies relying on this exemption must offer parties the ability to opt out of receiving future delivery notification calls and messages, and honor the opt-out requests.
7. Each notification must include information on how to opt out of future delivery notifications. Voice call notifications that are answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call. Text notifications must include the ability for the recipient to opt out by replying “STOP.”

Exempting delivery notifications would not create any risk of new unwanted calls or abusive practices. CAA members have no incentive to place unnecessary delivery notification calls and messages because they would incur significant expenses to provide such notifications. Delivery

⁴ 47 U.S.C. § 227(b)(2)(C).

⁵ *Id.*

⁶ Moreover, as the Commission has recognized, many consumers now no longer incur any per-call or per-text message charges for wireless service, and instead have unlimited calling and texting plans. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, 27 FCC Rcd 15391 ¶ 10 (2012). CAA members should be able to send non-telemarketing voice call (or text message, as applicable) package delivery notifications to those individuals.

companies would also endeavor to avoid dialing the wrong telephone number because such calls would do nothing to assist with missed deliveries while still creating expenses for CAA members.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

/s/ Mark W. Brennan

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